

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

IN THE MATTER OF THE PETITION OF)	ORDER GRANTING
SPRINT COMMUNICATIONS COMPANY L.P.)	MOTIONS TO COMPEL IN
FOR ARBITRATION PURSUANT TO THE)	PART
TELECOMMUNICATIONS ACT OF 1996 TO)	
RESOLVE ISSUES RELATING TO AN)	TC06-176
INTERCONNECTION AGREEMENT WITH)	
BROOKINGS MUNICIPAL UTILITIES D/B/A)	
SWIFTEL COMMUNICATIONS)	

On October 16, 2006, Sprint Communications Company L.P. (Sprint) filed a petition to arbitrate, pursuant to SDCL 49-31-81 and ARSD 20:10:32:29-32, and Section 252(b) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996), certain terms and conditions of a proposed Interconnection Agreement between Sprint and Brookings Municipal Utilities d/b/a Swiftel Communications (Swiftel). Sprint filed a list of unresolved issues consisting of: (1) Should the definition of End User in this Agreement include end users of a service provider for which Sprint provides interconnection, telecommunications services or other telephone exchange services? (2) Does the Telecommunications Act authorize the Commission to arbitrate terms and conditions for interconnection obtained under Section 251(a) of the Telecommunications Act? If yes, what terms and conditions should the Commission impose on the parties in this proceeding? (3) Should the Interconnection Agreement permit the parties to combine wireless and wireline traffic on interconnection trunks? (4) Should the Interconnection Agreement permit the parties to combine all traffic subject to reciprocal compensation charges and traffic subject to access charges onto the interconnection trunks? (5) What is the appropriate reciprocal compensation rate for the termination of telecommunications traffic? (6) Should Sprint's proposed language regarding Local Number Portability be adopted and incorporated into the Interconnection Agreement? (7) Should the ILEC-proposed Directory Listing provisions, as modified by Sprint, be adopted and incorporated into the Interconnection Agreement? (8) Termination: A) Should the termination provision of the Interconnection Agreement permit the existing Interconnection Agreement to remain in effect while the parties are in the process of negotiating and/or arbitrating a replacement Interconnection Agreement? B) Should the Interconnection Agreement contain provisions that allow the parties to terminate the Agreement for: 1) a material breach; 2) if either party's authority to provide service is revoked or terminated; or, 3) if either party becomes insolvent or files for bankruptcy? (9) What 911 liability terms should be included in the Interconnection Agreement? (10) What Force Majeure terms should be included in the Interconnection Agreement? Sprint respectfully requests the Commission to arbitrate each of the remaining disputes between Sprint and Swiftel, to find in Sprint's favor and to adopt Sprint's proposed contract language. In accordance with ARSD 20:10:32:30, a non-petitioning party may respond to the petition for arbitration and provide additional information within 25 days after the Commission receives the petition.

On October 19, 2006, the Commission electronically transmitted notice of the filing and the intervention deadline of November 10, 2006, to interested individuals and entities. On October 30, 2006, the Commission received a Joint Motion of Interstate Telecommunications Cooperative, Inc. and Brookings Municipal Utilities d/b/a Swiftel Communications for Deferral of Hearing on Sprint Communications Company's Request for Consolidation. On November 3, 2006, the Commission received a Petition to Intervene from South Dakota Telecommunications Association (SDTA). On November 13, 2006, the Commission received Sprint's Opposition to SDTA's Petition to Intervene

and Response of Interstate Telecommunications Cooperative, Inc. to the Petition for Arbitration and Request for Consolidation of Sprint Communications Company L.P. At its November 14, 2006, meeting, the Commission deferred SDTA's request for intervention and the request to consolidate Dockets TC06-175 and TC06-176. At its December 6, 2006, meeting, the Commission voted to deny intervention to SDTA (Commissioner Kolbeck dissented).

On January 9, 2007, Sprint filed a Motion to Compel requesting the Commission to issue an order compelling Swiftel to produce responses to Sprint's first set of discovery requests. On January 9, 2007, Swiftel filed a Motion to Compel Responses and Production of Documents Addressed to Sprint Communications, L.P. On January 12, 2007, Sprint filed a Response to Swiftel's Motion to Compel. On January 12, 2007, Swiftel filed a Response to Motion to Compel.

At a January 16, 2007, meeting, the Commission considered the Motions to Compel. The Commission has jurisdiction in this matter pursuant to SDCL Chapters 1-26 and 49-31, including 49-31-3 and 49-31-81, and 47 U.S.C. sections 251 and 252. The Commission may rely upon any or all of these or other laws of this state in making its determination.

In Sprint's Motion to Compel, Sprint requested that Swiftel be compelled to provide complete and appropriate responses to Request Nos. 2, 3, 15, 19, 26, 29, and 38. After listening to the arguments of the parties, the Commission made the following decisions. For Request Nos. 2 and 3, the Commission unanimously voted to grant the Motion to Compel. The Commission finds that Swiftel has not completely responded to the discovery requests. For Discovery Request 15, the Commission unanimously voted to not compel Swiftel to provide more complete responses. The Commission finds that Swiftel has responded to the request as written. For Discovery Request 19, the Commission unanimously voted to grant the Motion to Compel. The Commission finds that Swiftel has not adequately answered the request. For Discovery Request 26, the Commission unanimously voted to grant the Motion to Compel. The Commission finds that the request contains sufficient information for Swiftel to provide a response. For Discovery Request 29, the Commission unanimously voted to grant the Motion to Compel. The Commission finds that Swiftel has not sufficiently addressed the question that was asked. The Commission limited the response to the original question as contained in Sprint's discovery requests. For Discovery Request 38, Commissioner Hanson moved to grant the Motion to Compel. It died for lack of a second. Commissioner Johnson moved to not compel and this motion passed (Commissioner Hanson dissenting.) The Commission finds that Swiftel's response answered the question as written.

In Swiftel's Motion to Compel, Swiftel requested that Sprint be compelled to provide responses under oath. In addition, Swiftel requested that the Commission compel Sprint to provide substantive, non-evasive responses to discovery requests 4, 5, 13, 14, 15, 18, 20, 23, 24, 25, and 26 and to produce the documents requested in Requests for Production of Documents 1, 3, 4, 5, 6, and 8. After listening to the arguments of the parties, the Commission made the following decisions. With respect to providing the responses under oath, Sprint stated that it will do so. For Discovery Requests 4 and 5, the Commission found that based on the representations of the parties, there was no longer a need to take any action on these requests. For Discovery Requests 13, 14, and 15, the Commission voted unanimously to grant the Motion to Compel. The Commission will allow Sprint the opportunity to redact highly confidential rate information and limited the requests to South Dakota and to cable companies. The Commission finds that Sprint did not fully respond to these discovery requests. For Discovery Requests 18 and 20, the Commission granted the Motion to Compel (Commissioner Kolbeck dissenting). The Commission finds that although Sprint provided additional information in its response, Sprint still needs to supplement its response in order to fully respond to the discovery requests. For Discovery Requests 23, 24, 25, and 26, the Commission unanimously voted to grant the Motion to Compel. The Commission finds that although Sprint did

provide additional information in its response, Sprint has still not fully responded to these discovery requests. For Production of Documents (PDRs) 1, 4, and 6, the Commission unanimously voted that the agreement between MCC and Sprint should be produced subject to giving Sprint the opportunity to redact highly confidential information. For PDRs 3, 5, and 8, the Commission voted to find that no discovery needs to be compelled because Sprint has stated that it does not currently have the documents. However, to the extent that the documents requested in PDRs 3, 5, and 8 become available, Sprint shall provide them to Swiftel. (Commissioner Hanson dissenting on the second half of the motion.)

It is therefore

ORDERED, Sprint's Motion to Compel is granted in part; and it is

FURTHER ORDERED, that Swiftel's Motion to Compel is granted in part.

Dated at Pierre, South Dakota, this 18th day of January, 2007.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, by facsimile or by first class mail, in properly addressed envelopes, with charges prepaid thereon.</p> <p>By: <u>Helaine Kolbo</u></p> <p>Date: <u>1/18/07</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Dustin M. Johnson
DUSTIN M. JOHNSON, Chairman *dk*

Gary Hanson
GARY HANSON, Commissioner
Dissenting in part

Steve Kolbeck
STEVE KOLBECK, Commissioner
Dissenting in part